

Message Text

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54

ORIGIN ACDA-10

INFO OCT-01 IO-13 ISO-00 SSO-00 FEA-01 CIAE-00 INR-07 L-03

NSAE-00 NSC-05 EB-07 NRC-05 OES-06 DODE-00 ERDA-05

NSCE-00 PM-04 H-02 PA-01 PRS-01 SP-02 SS-15 USIA-06

AF-08 ARA-06 EA-07 EUR-12 NEA-10 INRE-00 /137 R

DRAFTED BY ACDA/GC: JHMCNEILL:BAC

APPROVED BY ACDA/NTB: TDAVIES

ACDA/NTB: RMIKULAK

NSC: JMARCUM

IO/SCT: LCAVANAUGH

C: LFUERTH

PM: EIFFT - ERDA:RDUFF/AJHODGES

CIA: TFROSCHER

OSD: TGEORGE/JLANDAUER

JCS: FMURRAY - S/S:MR. ORTIZ

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O 172118Z AUG 76

FM SECSTATE WASHDC

TO USMISSION IAEA VIENNA IMMEDIATE

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E.O. 11652: N/A TAGS: PARM, TECH, IAEA

SUBJECT: PNE AD HOC ADVISORY GROUP: USG COMMENTS ON IAEA

DOCUMENT GOV/COM. 23/13

REFS: A. IAEA VIENNA 6145; B. IAEA VIENNA 5063

, REFTEL A REQUESTED USG VIEWS ON SUBJECT DOCUMENT, ENTITLED "BASIC MATERIAL FOR A FURTHER STUDY OF LEGAL ASPECTS OF NUCLEAR EXPLOSIONS FOR PEACEFUL PURPOSES."

2. MISSION INSTRUCTED TO INFORM APPROPRIATE AGENCY OFFICIALS
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CIALS THAT SUBJECT DOCUMENT WOULD BE ACCEPTABLE TO USG

PROVIDED THAT THE FOLLOWING RECOMMENDATIONS FOR CHANGE ARE INCORPORATED:

A. ANNEX ONE, PARA ONE -- DELETE WORDS "IS THE BASIC INTERNATIONAL LEGAL INSTRUMENT" AND REPLACE WITH WORDS "CONTAINS SEVERAL PROVISIONS" (REASON FOR CHANGE: ACCURACY)

B. ANNEX ONE, PARA TWO -- ADD SEVENTH PREAMBULAR PARA OF NPT, SINCE IT DEALS WITH SAME SUBJECT;

C. ANNEX ONE, PARA SIX -- CHANGE SENTENCE IMMEDIATELY AFTER SECOND QUOTE TO READ AS FOLLOWS: "THERE IS NOTHING IN THE TREATY WHICH PREVENTS ANY NUCLEAR-WEAPON STATE, AS

DEFINED, FROM PROVIDING POTENTIAL BENEFITS ARISING OUT OF PEACEFUL APPLICATIONS OF NUCLEAR EXPLOSIONS TO ANY OTHER STATE WHETHER OR NOT PARTY TO THE TREATY, IN A MANNER CONSISTENT WITH: THE PROVISIONS AND PURPOSES OF ARTICLE V OF THAT TREATY; OTHER APPLICABLE INTERNATIONAL OBLIGATIONS; THE PRINCIPLE THAT ACCESS TO SUCH POTENTIAL BENEFITS NOT LEAD TO ANY PROLIFERATION OF NUCLEAR EXPLOSIVE CAPABILITY; AND, ALTHOUGH NO OBLIGATION EXISTS UNDER THIS ARTICLE OR ANY OTHER PROVISIONS OF THE TREATY FOR NUCLEAR-WEAPON STATES TO DEVELOP NUCLEAR EXPLOSIVE DEVICES FOR PEACEFUL APPLICATIONS, THE PRINCIPLE THAT SUCH POTENTIAL BENEFITS, WHEN REALIZED, MUST BE MADE AVAILABLE TO NON-NUCLEAR-WEAPON STATES PARTY TO THE TREATY ON A NON-DISCRIMINATORY BASIS AND THAT THE CHARGE TO SUCH PARTIES FOR THE EXPLOSIVE DEVICES USED WILL BE AS LOW AS POSSIBLE AND EXCLUDE ANY CHARGE FOR RESEARCH AND DEVELOPMENT." (REASON: ALTHOUGH DEPT APPRECIATES CIRCUMSTANCES DESCRIBED PARA ELEVEN REFTTEL B, USG IS OF VIEW THAT DEVELOPMENT POINT SHOULD BE REITERATED TO AGENCY, SO THAT USG VIEWS WILL BE ON RECORD. GUIDANCE ON HOW TO HANDLE THIS ISSUE AT NEXT AD HOC GROUP MTG WILL BE DEVELOPED AT APPROPRIATE TIME);

D. ANNEX ONE, PARAGRAPH FOURTEEN -- ADD TEXTS OF ARTICLES ONE AND FIVE OF TLAELOLCO TREATY (REASON: BALANCE PRESENTATION OF TREATY PNE IMPLICATIONS);

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E. ANNEX ONE, PARA FIFTEEN -- ADD FOLLOWING FOOTNOTE AT END OF PARA: "SEE, E.G., DECLARATIONS AND UNDERSTANDINGS EXPRESSED BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA ON THE OCCASION OF ITS RATIFICATION OF ADDITIONAL PROTOCOL TWO TO THIS TREATY.";

F. ANNEX ONE, PARA EIGHTEEN, SECOND SENTENCE -- DELETE WORDS "IN THE FIELD" AND REPLACE WITH "WHICH MAY AFFECT

THE CONDUCT" (REASON: ACCURACY);

G. ANNEX ONE, PARA TWENTY-EIGHT, FIRST SENTENCE -- DELETE WORDS "-ACCOUNT . . . THAT", AND DELETE WORDS "ARE INVOLVED", REPLACING LATTER WITH WORD "CONDUCT"- BEGIN DRAFT PARA WITH INSERTION OF FOLLOWING LANGUAGE: "UNDER CUSTOMARY INTERNATIONAL LAW, STATES ARE OBLIGATED TO CONDUCT THEMSELVES SO AS NOT TO CAUSE HARM TO ANY OTHER STATE. UNDER THIS GENERAL PRINCIPLE, STATES MAY BE HELD LIABLE, PRIMARILY THROUGH COMPENSATION, TO REDRESS HARM CAUSED TO OTHER STATES ARISING OUT OF THEIR NUCLEAR EXPLOSIONS OR RESULTING FROM THEIR FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE APPLICABLE TREATIES." (REASON: AVOID ATTRIBUTION OF LIABILITY TO STATE VERIFYING PNE

UNDER PNETAND CLARIFY BASIS OF LEGAL OBLIGATION);

H. ANNEX ONE, PARA THIRTY -- END SENTENCE AFTER WORD "TREATIES," DELETING BALANCE OF DRAFT SENTENCE. (REASON: DRAFT LANGUAGE CAN BE MISTAKENLY READ TO SUGGEST ROLE FOR AGENCY IN TREATY INTERPRETATION);

I. ANNEX TWO, PARA TWO -- INSERT WORDS "WHETHER OR NOT" BETWEEN WORDS "DEVICES" AND "DESIGNED" (REASON: ACCURACY);

J. ANNEX TWO, PARA THREE -- SUBSTITUTE WORD "COULD" FOR WORD "SHOULD" (REASON: CONFORM TO LANGUAGE OF NPT REVCON FINAL DECLARATION);

K. ANNEX TWO, PARA NINE -- DELETE WORDS "ECONOMIC . . . ASSESSMENTS" AND REPLACE WITH "STUDIES OR ASSISTANCE" (REASON: IAEA NOT COMPETENT TO OFFER VIEWS ON LEGAL RIGHTS OR OBLIGATIONS OF SOVEREIGN STATES);
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L. ANNEX TWO, PARA TEN -- DELETE WORDS "ECONOMIC . . . LEGAL" (REASON: SAME AS ABOVE);

M. ANNEX TWO, PARA ELEVEN, SUBPARA THREE -- DELETE AND SUBSTITUTE FOLLOWING LANGUAGE "THE AGENCY'S ASSESSMENTS SHOULD BE BASED ON SUCH STANDARDS OF SAFETY AS EXIST OR MAY BE DEVELOPED" (REASON: DRAFT LANGUAGE INVITES ATTEMPTS TO CHARACTERIZE LTBT PROHIBITION AS A RADIATION SAFETY STANDARD);

N. ANNEX TWO, PARA THIRTEEN -- MAKE WORD "PRINCIPLE" PLURAL (REASON: ACCURACY);

O. ANNEX TWO, PARA FIFTEEN -- DELETE SECOND SENTENCE

(REASON: SUPPLIERS CHARGES ARE DETERMINED SOLELY BY THEMSELVES);

P. ANNEX TWO, PARA SIXTEEN, SUBPARA (C) -- DELETE FIRST SENTENCE (REASON: REDUNDANT);

Q. ANNEX TWO, PARA SIXTEEN, SUBPARA (D), FIRST SENTENCE-- CHANGE WORDS "DIRECTLY INVOLVED; TO "PARTICIPATING" AND END SENTENCE AFTER WORD "PROJECT", DELETING BALANCE (REASON: ACCURACY);

R. ANNEX TWO, PARA SEVENTEEN, FIRST SENTENCE -- SUBSTITUTE WORDS "COULD BE MADE" FOR WORDS "SHOULD BE", AND IN SECOND AND THIRD SENTENCES THIS PARA, SUBSTITUTE WORD "COULD" FOR "SHOULD" (REASON: CONFORM TO NPT REVIEW CONFERENCE FINAL DECLARATION).

3. TRANSMISSION THIS MESSAGE INADVERTLY DELAYED SINCE AUGUST 11. KISSINGER

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Message Attributes

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Disposition Approved on Date:
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